

STATE OF MAINE
DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION
BUREAU OF INSURANCE

IN RE:

APPLICATION OF TOWER GROUP, INC. and
TOWER INSURANCE COMPANY OF NEW
YORK FOR APPROVAL OF THE PROPOSED
ACQUISITION OF CONTROL BY MERGER OF
NORTH EAST INSURANCE COMPANY

DECISION AND ORDER

Docket No. INS-06-410

Eric A. Cioppa, Acting Superintendent of the Maine Bureau of Insurance, issues this Decision and Order in the above-captioned proceeding.

I. THE PROPOSED ACQUISITION

The proceeding was instituted upon application Tower Group, Inc. ("Tower"), a publicly traded Delaware holding company, and Tower Insurance Company of New York ("TICNY"), a New York domiciled insurer for approval pursuant to 24-A M.R.S.A. §§ 222 and 3476, of a Stock Purchase Agreement to acquire control of Preserver Group, Inc. ("Preserver"), a New Jersey corporation, and its Maine domiciled insurance company, North East Insurance Company ("North East"). If the proposed acquisition is approved Tower will acquire the issued and outstanding shares of Preserver in an all cash transaction in the amount of approximately \$68,000,000, subject to certain expense and book value adjustments (the "Proposed Transaction"). A portion of the consideration will be contributed to Preserver and used to satisfy all outstanding debt of Preserver owed to the Sellers (estimated to be approximately \$31,000,000), and the remainder will be paid to the Sellers as consideration for the Common Stock. An additional purchase price of up to \$13,000,000 may be payable approximately three years following the closing of the Proposed Transaction if Preserver has favorable development on its loss and loss adjustment expense reserves as of June 30, 2006.

Tower will use its funds and the funds of its wholly-owned subsidiary, TICNY, to complete the Proposed Transaction. Sleepy Lagoon, Ltd., a Texas partnership, McWhorter Family Trust, Gail McWhorter, Alvin E. Swanson, Brion Properties, a Louisiana partnership, William Lobeck, William E. Lobeck, Jr. Trust dated June 1, 1997 and Kathryn L. Taylor Trust dated June 1, 1997 (each a "Seller", and collectively the "Sellers") currently own 100% of Preserver's issued and outstanding common stock, par value \$.50 per share (the "Common Stock"). If the Proposed Transaction is approved, Tower will own, directly or indirectly, 100% of the Common Stock, with TICNY directly owning up to 41% of the Common Stock. Upon the closing of the Proposed Transaction, Tower directly or

through TICNY, will own North East and the following additional U.S. insurance company subsidiaries of Preserver: Mountain Valley Indemnity Company, a New Hampshire domiciled insurer, and Preserver Insurance Company, a New Jersey domiciled insurer.

II. PROCEDURAL HISTORY

Tower and TICNY filed the Form A Statement, including Exhibits, with the Superintendent by correspondence dated December 5, 2006.¹ Thereupon, the Acting Superintendent issued a Notice of Pending Proceeding and Public Hearing on February 20, 2007. In the Notice, interested persons were provided an opportunity to submit an application to intervene as a full party in the proceeding, but no one chose to do so. On March 7, 2007, the Acting Superintendent issued an Order Revising the Schedule of Hearing in part.

The public hearing was held as rescheduled at 1:00 p.m. on March 23, 2007. No persons from the public attended or participated in the public hearing.

III. THE RECORD

At the hearing, Tower and TICNY offered, and the Acting Superintendent admitted, the following materials into the record of the proceeding:

Tower / TICNY Exhibit 1: Comprised of the Acting Superintendent's Notice of Pending Proceeding and Public Hearing, dated February 20, 2007.

Tower / TICNY Exhibit 2: Comprised of Tower / TICNY's Form A Statement Regarding the Acquisition of Control by Tower Group, Inc. and Tower Insurance Company of New York of North East Insurance Company, submitted by correspondence dated December 5, 2006 (Two Volumes).

Tower / TICNY Exhibit 2-A: Comprised of Tower / TICNY's Confidential Submission Related to the Form A Statement, submitted by correspondence dated December 5, 2006.

Tower / TICNY Exhibit 3: Comprised of Tower / TICNY's Prospectus Supplement, submitted by correspondence dated January 22, 2007.

Tower / TICNY Exhibit 4: Comprised of Tower / TICNY's Amendment No. 1 to Form A (regarding Item 4 of the Form A), submitted by correspondence dated February 8, 2007.

Tower / TICNY Exhibit 5: Comprised of Tower / TICNY's Amendment No. 2 to Form A (regarding Items 5 and 12 of the Form A), submitted by correspondence dated February 20, 2007.

In addition to the foregoing, Tower / TICNY's witness, Stephen L. Kibblehouse, Senior Vice President and General Counsel of Tower provided oral testimony as part of the record. On behalf of Preserver and North East, Patrick J. Haveron,

President and Chief Executive Officer of Preserver and Chairman of the Board of Directors and Chief Executive Officer of North East Insurance Company; and Ronald A. Libby, President and Chief Operating Officer of North East Insurance Company, provided oral testimony for the record.

In response to information requested by Bureau Actuary Richard Johnson during the public hearing, Tower / TICNY submitted a Response to Informational Request dated March 26, 2007 for the record.

IV. STANDARD OF REVIEW

As identified in the Notice of Pending Proceeding and Public Hearing, the legal standard of review for consideration of the pending application include the following under 24-A M.R.S.A. §§ 222(7)(A) and 3476(2):

(1) Whether, after the proposed acquisition, North East could satisfy the requirements for the issuance of a certificate of authority according to requirements in force at the time of the issuance, or last renewal or continuation of its certificate of authority to do the insurance business which it intends to transact in the State of Maine.

(2) Whether the effect of the proposed acquisition may be substantially or materially to lessen competition in insurance or the insurance business in the State of Maine or elsewhere as to the kinds of insurance involved, or would materially tend to create a monopoly as to such business therein, or would violate the laws of the State of Maine or of the United States relating to monopolies or restraints of trade.

(3) Whether the financial condition of Tower and TICNY is such as would jeopardize the financial stability of North East or prejudice the interest of its policyholders.

(4) Whether Tower's and TICNY's proposed acquisition or proposals to make any major change in the business or corporate structure or management of North East are unfair or prejudicial to policyholders.

(5) Whether the competence, experience, and integrity of Tower's and/or TICNY's directors and officers indicate that it would not be in the interest of policyholders or the public to permit them to control the operation of North East; and whether Tower's and/or TICNY's directors and officers are qualified by character, experience, and financial responsibility to control and operate North East, or cause it to be operated in a lawful and proper manner.

(6) Whether the proposed acquisition would tend to affect adversely the contractual obligations of North East or its ability and tendency to render service in the future to its policyholders and the public.

(7) Whether the interests of North East or its stockholders would be impaired through the proposed acquisition.

In addition to the legal standards of review under 24-A M.R.S.A. §§ 222 and 3476 as identified above, the Superintendent in his discretion may consider such other relevant issues identified by parties or otherwise.

V. FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based on the testimonial and documentary evidence presented at the hearing, and upon a review of the record of this proceeding, the Superintendent finds that no issues of material concern exist with respect to Tower / TICNY's abilities to satisfy the legal standards for approval set forth in 24-A M.R.S.A. §§ 222(7)(A) and 3476(2), summarized as follows:

(1) No evidence was presented to the contrary, and the Superintendent finds, that North East can satisfy the requirements for the issuance of a certificate of authority according to requirements in force at the time of the issuance, or last renewal or continuation of its certificate of authority to do the insurance business which it intends to transact in the State of Maine.

(2) No evidence was presented that demonstrates, and the Superintendent does not find, that any aspect of the proposed acquisition will substantially or materially lessen competition in insurance or the insurance business in the State of Maine or elsewhere as to the kinds of insurance involved, or would materially tend to create a monopoly as to such business therein, or would violate the laws of the State of Maine or of the United States relating to monopolies or restraints of trade.

(3) No evidence was presented that demonstrates, and the Superintendent does not find, that any aspect of the proposed acquisition would jeopardize the financial stability of North East or prejudice the interest of its policyholders.

(4) No evidence was presented that demonstrates, and the Superintendent does not find, that Tower / TICNY's proposed acquisition or proposals to make any other major change in the business or corporate structure or management of North East are unfair or prejudicial to policyholders.

(5) No evidence was presented to the contrary, and the Superintendent finds, that the competence, experience, and integrity of Tower / TICNY's directors and officers indicate that it would be in the interest of policyholders or the public to permit them to control the operation of North East; and that Tower / TICNY's directors and officers are qualified by character, experience, and financial responsibility to control and operate North East, or cause it to be operated, in a lawful and proper manner.

(6) No evidence was presented that demonstrates, and the Superintendent does not find, that the proposed acquisition would tend to affect adversely the

contractual obligations of North East or its ability and tendency to render service in the future to its policyholders and the public.

(7) No evidence was presented that demonstrates, and the Superintendent does not find, that the interests of North East or its stockholders would be impaired through the proposed acquisition.

For all of the foregoing reasons, the Superintendent concludes that Tower and TICNY have met the legal standards for approval set forth in 24-A M.R.S.A. §§ 222(7)(A) and 3476(2).

VI. ORDER

The application of Tower Group, Inc. and Tower Insurance Company of New York to acquire control of North East Insurance Company through acquisition of its parent corporation, Preserver Group, Inc., is APPROVED, subject to the following conditions:

1. Tower / TICNY shall file with the Superintendent the name and address of North East Insurance Company's statutory home office located in the State of Maine (including the name and address of its agent for service of process located in the State of Maine).
2. If the Superintendent or his designee(s) find it necessary for any reason to travel out-of-state for purposes of examining the books and records of North East Insurance Company or for any other valid regulatory purpose, North East Insurance Company or its parent company, Tower / TICNY, shall bear all reasonable costs related thereto.

VII. NOTICE OF APPEAL RIGHTS

This Decision and Order is a final agency action of the Superintendent of Insurance within the meaning of the Maine Administrative Procedure Act. It may be appealed to the Superior Court in the manner provided by 24-A M.R.S.A. § 236, 5 M.R.S.A. § 11001, et seq. and M.R. Civ. P. 80C. Any party to the proceeding may initiate an appeal within thirty days after receiving this notice. Any aggrieved non-party whose interests are substantially and directly affected by this Decision and Order may initiate an appeal within forty days of the issuance of this decision. There is no automatic stay pending appeal; application for stay may be made in the manner provided in 5 M.R.S.A. § 11004.

¹ In its December 5th correspondence, Tower and TICNY requested confidentiality for the information submitted by it under separate cover. Tower / TICNY invoked the trade secrets privilege recognized by Maine courts as an exception to Maine's Freedom of Access Act. 1 M.R.S. § 402(3). In addition, Tower / TICNY indicated that portions of its filing contained confidential personal information, including social security numbers, home addresses and dates of birth, disclosure of which could compromise personal privacy. In accordance

with this request, the Superintendent at the Public Hearing, granted Tower / TICNY's request for confidentiality. Accordingly, Exhibit 2-A is designated confidential and not subject to public inspection. All other portions of the record are open to public inspection.

PER ORDER OF THE SUPERINTENDENT OF INSURANCE

DATED: March 28, 2007

ERIC A. CIOPPA
Acting Superintendent of Insurance